

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 9076 of 1994**

**For Approval and Signature:**

**HON'BLE MR JUSTICE KS JHAVERI**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
  - 2 To be referred to the Reporter or not ?
  - 3 Whether their Lordships wish to see the fair copy of the judgment ?
  - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?
  - 5 Whether it is to be circulated to the civil judge ?
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**GSRTC - Petitioner(s)**  
**Versus**  
**HASMUKHBHAI D PANDYA - Respondent(s)**

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**Appearance :**

MS KRINA THAKKAR for MR YOGESH S LAKHANI for Petitioner No(s).: 1.

MR IS SUPEHIA for Respondent No(s).: 1.

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**CORAM : HON'BLE MR JUSTICE KS JHAVERI**

**Date : 24/06/2005**

**ORAL JUDGMENT**

1.0 The petitioner Corporation has challenged the judgment and award dated 29/12/1993 passed by the Industrial Tribunal, Ahmedabad, in Reference (IT) No. 46 of 1992, whereby the Tribunal has modified the penalty imposed on the respondent.

2.0 The respondent herein was working as a Conductor at the Modasa Depot of the petitioner Corporation.

2.1 It is the case of the petitioner that on 14.03.1982, while the respondent was on duty, the bus was checked by the checking squad of the petitioner Corporation and it was found that the respondent had committed serious irregularities in issuing tickets. Hence, departmental inquiry was held against the respondent. Pursuant to the said inquiry, show cause notice was issued to the respondent to which the respondent gave his reply. On the basis of the findings recorded during the time of inquiry, the petitioner Corporation dismissed the respondent from service by order dated 21.07.1983.

2.3 Being aggrieved by the said order, the respondent preferred appeal being First Appeal No.6254 before the First Appellate Authority of the petitioner, who by order dated 03.08.1984 modified the order of dismissal by placing the respondent at his Basic-Pay with continuity of service.

2.4 The respondent thereafter preferred second appeal being Second Appeal No.52 of 1984 before the Second Appellate Authority of the petitioner Corporation, who by order dated 29.11.1985, modified the order of the First Authority and directed the petitioner Corporation to stop yearly increment for three years with cumulative effect.

2.5 Feeling dissatisfied by the said order, the respondent preferred reference being Reference (IT) No.46 of 1992 before the Industrial Tribunal, Ahmedabad. The Tribunal by order dated 29.12.1993, modified the order of the Second Appellate Authority, by directing the petitioner Corporation to stop yearly increment for three years with non-cumulative effect. Against the said order, the respondent has approached this Court.

3.0 Ms.Krina Thakkar learned advocate appearing for Mr.Y S Lakhani for the petitioner has contended that the Tribunal has committed a serious error in law in exercising jurisdiction over the decision of the Second Appellate Authority, since the charges against the respondent were already proved. Ms.Thakkar has submitted that as per

the settled legal position, the Tribunal cannot sit in appeal over the decision of the Appellate Authority when the charges were proved.

3.1 Ms.Thakkar has relied upon a decision of the Apex Court in the case of **Devendra Swamy v. Karnataka State Road Transport Corp. reported in A.I.R. 2002 S.C. pg.2545**, wherein it has been held that the Court should not interfere with a punishment of dismissal from service, by exercising powers u/s.11(A) of the I.D. Act, when the punishment imposed by the disciplinary authority was fully justified. She has, therefore, submitted that the impugned order of the Labour Court is illegal and perverse and deserves to be quashed and set aside.

4.0 I have heard learned counsel for the parties and perused the documents placed on record. The respondent was dismissed from service on 21.07.1983. The said dismissal order was modified by the First Appellate Authority by placing the respondent at his Basic Pay with continuity of service on 03.08.1984. The said order was subsequently modified by the Second Appellate Authority, who reduced the punishment to stoppage of three yearly increments with cumulative effect. Therefore, when both the Appellate Authorities have modified the order of dismissal, the Tribunal ought not to have interfered with the said order.

4.1 It is required to be noted that the respondent was earlier involved in such mis-conduct on more than twelve occasions and he was penalized by minor penalties of warning and fine. Thus, in spite of giving opportunities to improve himself, the respondent had continued with the said activities. Since the misappropriation was of public money, the petitioner Corporation was justified in dismissed the respondent from service, which was subsequently modified to stoppage of three increments with cumulative effect by the Second Appellate Authority of the petitioner Corporation.

4.2 Moreover, in view of the decision of the Apex Court referred to herein above, the Tribunal ought not to have interfered with the order passed by the Second Appellate Authority. In that view of the matter, I am of the opinion that the impugned order of the Tribunal is illegal and perverse and deserves to be quashed and set aside.

5.0 For the foregoing reasons, this petition is allowed. The order dated 29/12/1993 passed by the Industrial Tribunal, Ahmedabad, in Reference (IT) No. 46 of 1992 is ordered to be quashed and set aside. The order dated 28`.11.1985 passed by the Second Appellate Authority of the petitioner Corporation is confirmed. Rule is made absolute accordingly with no order as to costs.

(K. S. JHAVERI, J.)

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